United Nations A/HRC/31/NGO/171

General Assembly

Distr.: General
23 February 2016

English only

Human Rights Council
Thirty-first session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by the BADIL Resource Center for Palestinian Residency and Refugee Rights a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02820(E)

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Understanding of Forcible Transfer Must be Developed if its Perpetrators are to be Held to Account

The BADIL Resource Center for Palestinian Residency and Refugee Rights, congratulates the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) on its recognition that the war crime and crime against humanity of forcible transfer can be underpinned by the creation of a 'coercive environment' which, in turn, forces individuals and families to leave their homes and communities. BADIL also supports UNRWA's assessment that the execution of demolitions against Palestinian homes and other structures by Israeli forces "exacerbates an already coercive environment, driving Bedouin communities off the land they have inhabited for decades".[1] Though UNRWA's analysis and change of terminology represents a positive step towards affording Palestinians the legal protection to which they are entitled, and the holding to account of perpetrators of international crimes, further progress in this area is required as a matter of great urgency.

Forcible transfer is a devastating offence, being recognized as a grave breach of the Fourth Geneva Convention as well as being classed as both a war crime and crime against humanity under the Rome Statute.

In its shift away from a limited understanding of forcible transfer as the physical removal of protected persons to other, specified locations, UNRWA has brought its legal analysis in-line with the consensus of international jurisprudence. Indeed, legal instruments, scholarly comment and case law from international criminal tribunals is unequivocal in asserting that any action by an occupying power or its agents which unlawfully forces members of an occupied population to leave their homes and communities may give rise to a finding of forcible transfer.

In its recognition of the role played by Israel's creation of a coercive environment in the forced displacement of Palestinians, UNRWA contributes to a clearer understanding of the reality on the ground, and promotes the delivery of justice to victims and accountability to perpetrators.

This is essential, as Israel's forcible transfer of Palestinians is ongoing. On 2 February 2016, Israeli forces destroyed 24 homes in the West Bank villages of Al Halaweh and Jinba. As a result, 134 Palestinians, including 69 children, were displaced and left homeless. Just four days later, Israel carried out more demolitions, with 26 Palestinian refugees, including 17 children, affected in the community of Abu Nwar, on the Jerusalem periphery.[2]

These latter demolitions were conducted as part of wider Israeli efforts to forcibly transfer thousands of Palestinian Bedouin to specified urban townships; efforts which would be economically, socially and culturally catastrophic for the affected communities, as well as acting as a precursor for the execution of Israel's 'E1 Master plan', entailing the construction of almost 3,700 housing units for Jewish Israeli settlers/colonizers.[3] It is clear, then, that Israel intends to follow the mass forcible transfer of Palestinians with vast settlement construction and expansion; creating facts on the ground and seeking to exercise permanent sovereignty over occupied Palestinian land; a practice wholly consistent with definitions of 'colonialism' adopted by UN General Assembly resolutions.

However, BADIL highlights that demolitions – as well as the prior issuing of demolition orders – represents just one coercive factor operating within what Israeli policy has rendered an almost impossible living environment for Palestinian Bedouin communities. For instance, not being able to access public water or electricity networks creates

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[1] UNRWA, 7th January 2016. *UN agency condemns demolition of homes of Palestinian Bedouin in West Bank*. Available at: http://www.unrwa.org/newsroom/official-statements/unrwa-condemns-demolition-homes-palestine-refugee-bedouins-families

[2] Ibid.

[3] BADIL. February 2015. *Displacement of Palestinians as a War Crime: information for the consideration of the Commission of Inquiry, established under United Nations Human Rights Council Resolution S-21/1*. pg.40. Available at: http://www.badil.org/phocadownload/badil-new/publications/research/working-papers/displacement-as-war-crime-en.pdf

chronic health and hygiene issues, whilst expanding colony/settlement boundaries bring with them increased risk of harassment and violence from residents of such colonies.

BADIL also notes that the presence of a formal plan is not a prerequisite for a finding of forcible transfer, and any forced displacement of Palestinians resulting from any demonstrably coercive environment operating inside the occupied Palestinian territory (oPt) may serve as a material act upon which a *prima facie* case for forcible transfer may be based.

The notion of 'force' in this context is not restricted only to physical considerations, but also includes threats of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment. This includes "threatening and intimidating acts that are calculated to deprive the civilian population of exercising its free will".[4]

Through this appropriate lens, a whole host of Israeli policies which serve to forcibly transfer Palestinians comes into focus, including denial of residency, implementation of a permit regime, land confiscation and denial of use, discriminatory zoning and planning, segregation, denial of natural resources and access to services, denial of refugee return, suppression of resistance and the permitting of unlawful acts by non-state actors.[5] To this end, it must also be necessarily acknowledged that Israel has created impossible living environments not just for Palestinians residing within the Jerusalem periphery, or even within Area C, but throughout the oPt as a whole – consisting of the West Bank, including East Jerusalem, and the Gaza Strip. In both its gravity and geographic scope, the issue of Israeli-perpetrated forcible transfer is vast.

Despite this, the international community has thus far failed to hold Israel accountable for its continuing perpetration of this international crime. This is a failure which has served only to embolden the Occupying Power in its conducting of such abuses.

To this end, BADIL reminds the international community that forcible transfer is a crime which confers legal obligations on third party states, with Common Article 1 of the Fourth Geneva Convention stipulating that "High Contracting Parties undertake to respect for the present Convention in all circumstances". Furthermore, as a grave breach of the Fourth Geneva Convention and thus one of the most heinous classifications of war crime, High Contracting Parties are obligated to search for individuals alleged to have committed – or to have ordered to be committed – forcible transfer, and to bring such persons before a domestic court or, alternatively, to hand such persons over to another High Contracting Party so that they may be brought before a court of law.

Therefore, it is of the utmost importance that the international community actively supports and encourages all steps to hold to account those responsible for the perpetration of international crimes, and to pursue a fair, just and durable solution to the Israel/Palestine question through mechanisms of international law rather than political bargaining. This rights-based approach is desperately required to bring to an end enduring Palestinian suffering, and to protect the relevance of international law.

Accordingly, the BADIL Resource Center for Palestinian Residency and Refugee Rights:

- Calls upon third party states, UN bodies, regional actors and international non-governmental organizations to join UNRWA in applying appropriate legal terminology of the present day reality in the oPt and identify Israel's creation of coercive environments for Palestinians and the resulting forced displacement as constituting forcible transfer;

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[4] For more information, see BADIL's June 2015 submission to the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967; *Israel's Forcible Transfer of Palestinian Bedouin: Forced Displacement as a Pillar of Colonialism and Apartheid*. Available at: http://www.badil.org/en/publication/press-releases/60-2015/4439-pr-en-1307155-25.html

[5] BADIL, 2014. *Forced Population transfer: The Case of Palestine. Introduction*. Available at: http://www.badil.org/en/press-releases/142-2012/3638-press-eng-53

- Calls upon third party states, UN bodies, regional actors and international non-governmental organizations to recognize that there is no requirement for forced displacement to take place as part of a formal plan to reach a finding of forcible transfer, and thus adopt a much wider angle of review in assessing Israeli-perpetrated forcible transfer;
- Calls upon High Contracting Parties to honor their obligation under Common Article 1 of the Fourth Geneva Convention to take all available measures to halt Israel's perpetration of forcible transfer of Palestinians inside the oPt;
- Calls upon High Contracting Parties to investigate Israel's policy of forcible transfer and search for individuals present on their respective territory who have materially participated in the forcible transfer of Palestinians, and to either bring proceedings against such persons in their national courts under the principle of universal jurisdiction, or to hand over such persons to a fellow High Contracting Party so that they may be brought before a court of law.